



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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JUN 23 2014

William H. Hyatt, Jr., Esq.
K&L Gates LLP
One Newark Center
Tenth Floor
Newark, New Jersey 07102-5285

Subject: Lower Passaic River Study Area

Dear Mr. Hyatt:

This letter is in response to the series of four letters to Deputy Administrator Bob Perciasepe or to Assistant Administrator Mathy Stanislaus dated between February 6 and March 24, 2014, sent on behalf of the Cooperating Parties Group (CPG). Deputy Administrator Perciasepe and Assistant Administrator Stanislaus asked me to respond to you on their behalf.

As you know, the public comment period for the Lower Eight Miles of the Lower Passaic River part of the Diamond Alkali Superfund Site Proposed Plan is now open and has been extended through August 20, 2014. EPA will accept new written comments on the Proposed Plan during the public comment period and these previous letters will not be considered comments to the Proposed Plan.

EPA recognizes the work that the CPG has accomplished and we look forward to the CPG completing on-going work. We welcome all stakeholder input and appreciated the opportunity to hear and understand your concerns.

The February 6, 2014 letter presents your perspective regarding consistency with the National Contingency Plan (NCP). As you know, the 2007 Administrative Order on Consent (AOC) indicated that interim or final early action alternatives were being evaluated for the Lower Passaic River Study Area. EPA has incorporated data from the RI/FS into the FFS and Proposed Plan. The remediation strategy and Proposed Plan are consistent with the NCP and are supported by the robust administrative record.

Deputy Administrator Perciasepe and Assistant Administrator Stanislaus asked me to assure you that EPA headquarters offices will continue to be closely involved, consistent with the program delegation, as EPA moves forward with decisions for the site. We expect that the CPG will complete in a timely manner the 17-mile Lower Passaic River Remedial

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Investigation/Feasibility Study (RI/FS). Full and fair consideration will be given to the potential remedial alternatives that are developed within the AOC framework.

The February 12, 2014 letter presents information that the CPG believes supports the premise that the targeted remedial approach will be as or more protective than the bank-to-bank remedial approach. We carefully considered the three questions outlined in that letter and appreciated the dialogue concerning the modeling approaches. As described in the Proposed Plan, based on information available to date, EPA concluded that any remedy would likely need to take into account the toxic and persistent nature of the multiple contaminants of concern that exist bank-to-bank in the lower 8.3 miles and would not be adequately addressed by a targeted remedial approach. We understand that the CPG may submit additional information during the public comment period for evaluation by EPA and will respond in that context.

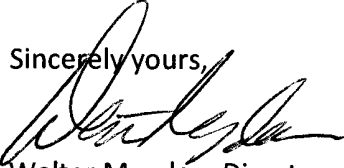
The March 3, 2014 letter presented further information on why the CPG believes EPA should delay the selection of the remedy for the lower 8.3 miles until the RI/FS is completed. Your letter also suggested that the RI/FS process is approaching a point where limited additional insight will be gained through quantitative modeling or further data evaluation. We do not believe a delay is appropriate for this major on-going source of multiple contaminants to the Lower Passaic River and Newark Bay. The Proposed Plan comment period is currently open and changes to the preferred alternative, or a change from the preferred alternative to another alternative, may be made if public comments or additional data indicate that such a change would result in a more appropriate remedial action. The final decision regarding the selected remedy will be made after EPA has taken into consideration all public comments.

As described in the Proposed Plan, EPA also expects to employ an adaptive management approach in regard to any remedial alternative selected during the remedial design and implementation of the remedy. This will allow for appropriate adjustments to ensure efficient and effective remediation. Information critical to the successful implementation of the remedy can be evaluated, models may be reviewed and updated and new projections made which could provide the opportunity for the remedial action to be modified, if appropriate. Any remedy modifications will be made and documented in accordance with the CERCLA process, through an Explanation of Significant Differences or an Amendment to the Record of Decision.

The March 24, 2014 letter presents concerns that bank-to-bank dredging and capping will set a new precedent for other areas, become the preferred approach for managing uncertainty for other records of decision, and be catastrophic if it were to fail to achieve its remedial goals. On the first point, the selection of bank-to-bank dredging and capping will not set a precedent for other records of decision. EPA will continue to make each decision based on its merits, considering site-specific circumstances within the nine-criteria remedy selection framework. Likewise, considerations of uncertainty will continue to be made within the context of the specific circumstances. As stated in the Proposed Plan, we think that the proposed bank-to-bank approach, if selected, would achieve the remediation objectives. The adaptive management approach discussed above will allow for adjustments as we gain greater understanding.

We look forward to the timely completion of the on-going work by the CPG and believe that continued cooperation is essential for our shared objective for successfully remediation of the Lower Passaic River.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Walter Mugdan', written over the 'Sincerely yours,' text.

Walter Mugdan, Director
Emergency and Remedial Response Division

